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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/804,238

03/19/2004

Jens Ole Andersen

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WINSTON & STRAWN LLP
PATENT DEPARTMENT
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EXAMINER

VANATTA, AMY B

ART UNIT

PAPER NUMBER

3765

MAIL DATE

DELIVERY MODE

12/02/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/804,238	Applicant(s) ANDERSEN, JENS OLE	
	Examiner Amy B. Vanatta	Art Unit 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☒ Certified copies of the priority documents have been received in Application No. 09/529,362.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Reissue Oath/Declaration

1. The reissue oath/declaration filed on 3/19/04 is defective because it fails to identify at least one error which is relied upon to support the reissue application. See 37 CFR 1.175(a)(1) and MPEP § 1414. That is, the declaration filed 3/19/04 does not sufficiently specify the error upon which the reissue is based. See MPEP § 1414, which states in part:

All that is needed for the oath/declaration statement as to error is the identification of "at least one error " relied upon. In identifying the error, **it is sufficient that the reissue oath /declaration identify a single word, phrase, or expression in the specification or in an original claim, and how it renders the original patent wholly or partly inoperative or invalid.**

It is not sufficient for an oath /declaration to merely state "this application is being filed to correct errors in the patent which may be noted from the changes made in the disclosure." Rather, the oath /declaration must specifically identify an error. In addition, it is not sufficient to merely reproduce the claims with brackets and underlining and state that such will identify the error. See *In re Constant*, 827 F.2d 728, 729, 3 USPQ2d 1479 (Fed. Cir.), cert. denied, 484 U.S. 894 (1987). **Any error in the claims must be identified by reference to the specific claim(s) and the specific claim language wherein lies the error. A statement of " ... failure to include a claim directed to ..." and then presenting a newly added claim, would not be considered a sufficient " error" statement since applicant has not pointed out what the other claims lacked that the newly added claim has, or vice versa.** Such a statement would be no better than saying in the reissue oath or declaration that " this application is being filed to correct errors in the patent which may be noted from the change made by adding new claim 10." In both cases, the error has not been identified.

Applicant's declaration states that the '773 patent is wholly or partly inoperative by reason of applicant claiming less than he had a right to claim. This means that applicant failed to claim broader subject matter. However, the claims as presently amended are all narrower in scope than those of the '773 patent, and thus the declaration should state that applicant claimed *more* than he had a right to claim.

Also, applicant's declaration fails to sufficiently and specifically state the error which required the amendment to claim 6 and/or the presentation of claim 24, as these claims are currently amended.

2. The reissue oath/declaration filed 11/12/07 is defective because it fails to contain the statement required under 37 CFR 1.175(a)(1) as to applicant's belief that the original patent is wholly or partly inoperative or invalid. See 37 CFR 1.175(a)(1) and see MPEP § 1414.

3. The reissue oath/declaration filed on 11/12/07 is defective because it fails to properly identify at least one error which is relied upon to support the reissue application. See 37 CFR 1.175(a)(1) and MPEP § 1414. That is, the declaration filed 11/12/07 does not sufficiently specify the error upon which the reissue is based. It is not sufficient to merely describe the changes made in the claims. See MPEP § 1414, II, sections(B) and (C).

4. Claims 1-15 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defects in the declaration are set forth in the discussion above in this Office action.

Claim Rejections - 35 USC § 112

5. Claim 15 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 15 is rendered indefinite by the recitation of a nonwoven fabric “produced by the plant of claim 14”. Thus, the claim is a “product-by-apparatus” claim, which is not a recognized statutory class of invention. It is unclear in what manner the apparatus further limits the claimed product.

Claim Rejections - 35 USC § 102

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claim 15 is rejected under 35 U.S.C. 102(b) as being anticipated by Srinivasan et al (US 5,500,281).

Srinivasan et al disclose a three-layered hydroentangled web. See Fig. 2, in which a first unit 21 forms a bottom layer, a second unit 21 forms a middle layer, and a third unit 21 forms a top layer. The layers are successively laid on top of one another to form a three layered sandwich web, as claimed. A step of hydroentangling the web is disclosed (see col. 8, lines 45-47). Thus, a three layered hydroentangled sandwich fiber web is disclosed, as in claim 15. The recitation of the use of the plant of claim 14 to produce this product does not further limit the structure of the claimed product over that of Srinivasan.

Response to Arguments

8. Applicant's arguments filed 11/12/07 have been fully considered but they are not persuasive.

Regarding the rejection of claim 15 under 35 U.S.C. 112, second paragraph, applicant argues that the manner in which the nonwoven fabric of claim 15 is produced is clear because claim 1 (from which claim 14 depends) "recites the detailed process for producing the nonwoven fabric". The examiner disagrees with this statement, since claim 1 does not claim any process steps. Claim 1 is directed an apparatus (a plant) and the claim recites the structural elements which comprise the plant. Claim 1 does not recite a "detailed process", as applicant contends.

Regarding the rejection of claim 15 as anticipated by Srinivasan et al, applicant argues that Srinivasan discloses a nonwoven fabric which is formed by a carding process, as opposed to the air-laying process recited in the present invention. Applicant also argues that the nonwoven of the claimed invention does not include a laminar structure and provides a lower density and increased softness as compared to Srinivasan. Firstly, it is noted that no "air-laying process" is encompassed by claim 15, as claim 15 and the claims from which it depends do not claim any process steps. Secondly, the examiner contends that the nonwoven of Srinivasan has the structure of the claimed product, as claim 15 merely recites a three-layered hydro-entangled sandwich fiber web. The use of the plant of claim 14 to produce the nonwoven does not define any particular structure which distinguishes the claimed nonwoven fabric from that of Srinivasan.

Allowable Subject Matter

9. Claims 1-14 would be allowable if the rejection based upon the defective reissue declaration is overcome.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy B. Vanatta whose telephone number is 571-272-4995. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on 571-272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3765

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Amy B Vanatta/
Primary Examiner
Art Unit 3765